

War in Yemen (2): Why the Saudi-led coalition has not obeyed the law of naval blockade and violates IHL

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In the [first comment](#) I concluded that it appears difficult to claim that a blockade can be imposed legally in a non-international armed conflict (NIAC). However, I assume that a blockade in a NIAC can be lawful. Against this background, this comment assesses whether the coalition nevertheless obeyed the law of naval blockade and standards of international humanitarian law (IHL).

The law of naval blockades derives from the [1856 Paris Declaration](#), the [1909 London Declaration](#) and the [1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea](#) (SRM), whereby the SRM reflects customary international law. In my view, this legal regime sets limits to blockading States to protect civil population and international shipping and it is basically applicable to international armed conflicts only. However, given the fact that States irrespective of the lawfulness conduct blockades in a NIAC, application of this protective regime, let it be by analogy, is without alternative – a reasoning well known regarding the binding effects of IHL towards an aggressor.

The law of naval blockade consists of four major rules. First, under Article 94 SRM the blockading State shall officially

‘specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral States may leave the blockaded coastline.’

The announcement must literally be brought to the knowledge of States; it does not suffice to simply provide information to be called up. If the announcement does not entail details about commencement or the blockaded area, it is invalid under Article

10 London Declaration. As a consequence, ensuing enforcement measures would violate international law.

If it were the case that the coalition only issued press releases, as the one in which Major General [Al-Asiri](#) has been cited, and the press releases did not entail the required information, it will be a reason to render the announcement legally invalid.

Has the blockade been kept effective?

Second, Rule 4 Paris Declaration states that *'blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.'*

Thus, the blockading forces have to be employed in a manner to hinder any ingress and egress by vessels of all States into or out of the blockaded area. Article 10 SRM further articulates that effectiveness of a blockade is a question of fact and consequently a naval blockade may remain effective, even if it comes to single transgressions.

Conferring to [media](#) information, the coalition has not barred all vessels, but rather the *'majority of vessels approaching Yemeni ports'*. Additionally a shipping source in Hudaydah stated:

'In the past few days the Saudis have been more flexible, but the Egyptians have been rigid, not letting anything through'.

Accepted this statement to be true, it provides a sound argument that the blockade off Yemen has not continuously been kept effective and so resembled more the Continental Blockade imposed by Napoleon. As a result, ensuing enforcement measures would, for this reason too, contravene international law.

The same holds true regarding the 20-days total blockade. It is [reported](#) that the coalition refused to allow any vessels to travel to Houthi-controlled ports during these days, the coalition thereby probably fulfilled the effectiveness test. However, the coalition has not announced any blockade properly, so that it is not crucial – strictly speaking – whether the 20-days total blockade has been kept effective at any given time.

Third, under Article 5 London Declaration a blockade must to be applied impartially to the vessels of all States. This provision is straight forward, solely, the blockading State's fleet, especially merchant ships, are also encompassed. This is due to the blockading State shall not make any profit out of the increased demand for food, fuel and other essential goods by replacing the former trading partners with its own beneficiaries. Unfortunately, lack of information renders it not safe to make a reliable statement on this point.

Has the coalition obeyed IHL?

Forth, a blockading State must obey the standards of IHL to legally enforce the blockade. In this regard Article 102 SRM stipulates:

‘The declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or [...]; or (b) the damage to the civilian population is [...], excessive in relation to the concrete and direct military advantages anticipated from the blockade.’

Applicability of both provisions is more a matter of fact and depends on a case-by-case decision. Nevertheless, a blockade under Article 102 lit. a) presupposes a certain degree of intent of the blockading State, the existence of which cannot be determined due to the facts at hand do not allow doing so.

But assessing the scenario anticipated by Article 102 lit. b), I argue that if a population, like the Yemeni, is subject to the worst global famine, half a million children under the age of five are severely malnourished and every six months more than 2,100 people die of cholera, as purported by the [media](#) and [HRW](#), a blockade *per se* contravenes the prohibition of Article 102 lit. b) SRM, no matter how great the concrete and direct military advantage may be. Such an extreme exceptional case does not necessitate a case-by-case decision.

The coalition has been further [criticized](#) for delaying and blockading urgently needed humanitarian deliveries. If the population of a blockaded area is inadequately provided with food and other essential objects, allegedly like the Yemeni population, the blockading State under Article 103 SRM is obliged to provide for free passage of the foodstuffs and objects. Thereby the blockading State has the discretion to make the deliveries depending upon prior authorization and inspections. Like the question of impartiality, however the facts at hand do not suffice to decide on this point.

To summarize, neither has the coalition's blockade been imposed in accordance with the law of naval blockade nor have the enforcement measures been conducted properly. I further opine that UN Security Council [Resolution 2216](#) of April 2015 and the law of contraband are no adequate legal grounds, because the legal regimes do not provide for wide-ranging enforcement measures as exercised by the coalition. Thus, the naval enforcement measures by the Saudi-led coalition contravene international law.

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